Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Amendment of the Commission's	)	
Rules to Certify the Industrial Tele-	)	
communications Association (ITA) to	)	RM No. 10687
Frequency Coordinate the Power Radio	)	
Service, Railroad Radio Service, and	)	
Automobile Emergency Radio Service	)	
Under Part 90 of the Commission's Rules	)	

OPPOSITION

OF THE

ASSOCIATION OF AMERICAN RAILOADS

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To: The Commission

OPPOSITION OF THE ASSOCIATION OF AMERICAN RAILOADS

The Association of American Railroads ("AAR"), by its undersigned counsel and pursuant to Section 1.405 of the Commission's rules, hereby opposes the "Informal Request of the Industrial Telecommunications Association for Certification to Coordinate the Power Radio Service, Railroad Radio Service, and Auto Emergency Radio Service Under Part 90 of the Commission's Rules" filed by the Industrial Telecommunications Association ("ITA") on January 27, 2003. On March 26, 2003, the Commission released Public Notice of ITA's request.1

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1 FCC Public Notice, Report No. 2601, March 26, 2003.

I. Introduction and Summary

AAR is vigorously opposed to ITA's request to be certified to perform frequency coordination for the channels specified for railroad use in Section 90.35 of the Commission's rules.2 Multiple frequency coordinators for railroad channels would create chaos and confusion, and result in incorrect and dangerous coordination decisions by persons with no knowledge of the intricacies of specialized railroad operating procedures and communications requirements.

AAR is a voluntary non-profit membership organization whose freight members generate approximately 97% of the total operating revenues of all freight railroads in the U.S.3 In addition, Amtrak, the nation's principal intercity passenger railroad, is a member of AAR, as are numerous regional and short line railroads.4 AAR has been certified by the Commission as the exclusive frequency coordinator for the land mobile frequencies used by the railroad industry for dispatcher-to-train links, onboard

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2 47 C.F.R. ¶ 90.35.

3 Oppositions to ITA's proposal have been filed in this proceeding by all six major U.S. and Canadian "Class 1" freight railroads (all of which are members of AAR): Burlington Northern and Santa Fe Railway Company, Canadian National Railway, Canadian Pacific Railway, CSX Transportation, Norfolk Southern Corporation, and Union Pacific Railroad.

4 *See* letter from Amtrak to the FCC Secretary dated April 18, 2003, opposing RM-10687. Some short line railroads are members of AAR, while others are members of another trade association devoted more pointedly to the concerns of smaller railroads; in this regard, *see also,* letter dated April 16, 2003 to the FCC Secretary from Richard F. Timmons, President, American Short Line and Regional Railroad Association ("ASLRRA"), which represents more than 400 short line and regional railroads, recommending on behalf of ASLRRA's members that the FCC dismiss ITA's request.

communications, train-to-train communications, automatic train control systems and other industry-specific uses of spectrum. 5/

Radio communications systems are a critical component of the nation's rail network, and are essential for safe operations. The importance of safety in the railroad industry is evident from the very nature of the day-to-day operations of the business, *i.e.*, the constant movement of people, heavy equipment and freight (including hazardous or toxic industrial materials). The safe and efficient operation of today's passenger and freight rail transportation networks would be impossible without reliable and effective mobile radio communications. 6/

When the Commission changed its rules in 1997 to allow competitive frequency coordination for most industrial and business users of mobile radio spectrum, it carved out an important exception by confirming that certain frequency coordinators, including AAR, should continue as the *exclusive* frequency coordinators for "quasi-public safety"

5/ *See* Frequency Coordination in the Private Land Mobile Radio Services, *Report & Order*, 103 FCC 2d 1093, ¶ 94 (1986); Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Report and Order*, 12 FCC Rcd 14307, 14324, 14330 (1997) ("*Second Report & Order*"), and *Second Memorandum Opinion and Order*, 14 FCC Rcd 8642, 8646-47 (1999) ("*Second Memorandum Opinion & Order*"); Waiver of the Commission's Rules to License Use of Six Conventional 900 MHz Frequency Pairs for Advanced Train Control System, *Order*, 3 FCC Rcd 427 (PRB 1988); and Modification of Licenses for Use in Positive Train Control Systems, *Order,* 16 FCC Rcd 3078 (WTB 2001).

6/ The link between rail safety and radio is well established in Federal legislation and regulation. For example, pursuant to the 1992 Rail Safety Enforcement Act, 49 U.S.C. § 20103(a), the Department of Transportation, acting through the Federal Railroad Administration ("FRA"), has adopted regulations governing the use of radio for safety-related purposes in the rail industry. *See, e.g.*, 49 C.F.R. § 220.9 *et.seq.*, prescribing radio communications requirements for locomotives, right-of-way crews, etc. *See also*, 49

entities such as railroads and utilities, whose day-to-day operations are "safety-related" and offer "little or no margin for error."7 Citing letters in the record from the Federal Railroad Administrator and the Chairman of the National Transportation Safety Board, the Commission acknowledged in 1997 the importance of mobile radio communications systems to these safety-related functions and emphasized that "[a]ny failure in their ability to communicate by radio could have severe consequences on the public welfare."8 Weighing the potential benefits of competitive frequency coordination against the risks of improper coordination decisions by those not versed in the intricacies of railroad or utility operations, the Commission wisely opted in favor of safety, stating that "maintaining the integrity of spectrum used for such public safety purposes is extremely important," and concluded that "using coordinators who are knowledgeable with such special communications needs is the best way to protect those operations, which involve safety-related communications, and outweighs any potential benefits that may be gained through a competitive frequency coordination process."9

C.F.R. § 232.19 *et seq.*, governing operation of radio-equipped one-way and two-way "end-of-train" devices for monitoring and activating brake systems aboard trains.

7 Exclusive status was re-affirmed by the Commission in 1997 for two of the three coordinators targeted by ITA's request – AAR and the Utilities Telecommunications Council ("UTC") – in the *Second Report & Order*, *supra*, 12 FCC Rcd at 14329-30. ITA's third target, the American Automobile Association ("AAA"), was confirmed as the exclusive coordinator for auto emergency channels in 1999 in the *Second Memorandum Opinion & Order*, *supra*, 14 FCC Rcd 8642, 8650-52.

8 *Second Report & Order* at 14329 and n. 101. As an example, the Commission noted that "the failure or inability of trains to communicate with each other or a central dispatcher could result in unsafe conditions and an increased risk of a derailment." *Id.*

9 *Id.* at 14329, 14330.

Nothing has happened since 1997 to cause the Commission to abandon that conclusion with respect to railroad communications, and ITA has offered no rationale for change other than its own self-interest in expanding the customer base for its commercial frequency coordination business. Actually, there are three circumstances, new since 1997, that underscore the wisdom of the Commission's previous decision as regards the railroad industry: (1) the upcoming migration of the railroads' mobile radio networks to narrowband technology, which will require even more centralized coordination and planning of the railroads' frequency assignments in the U.S. and Canada; (2) the adoption of new Federal regulatory requirements in 1998 by the Federal Railroad Administration ("FRA") governing railroad radio use; and (3) the events of 9/11, which have elevated the importance of interference-free mobile radio links between train crews and control centers.

AAR will demonstrate herein that it would be contrary to the public interest for the Commission to grant ITA's request with respect to the mobile radio frequencies used by the railroad industry in the United States.

II. Railroad Mobile Radio Systems are Unique and Specialized, Requiring a Frequency Coordinator with Specialized Knowledge of Railroad Operations

Mobile radio technology is absolutely essential for all aspects of railroad operations, including voice communications among train crews, dispatchers, yard crews, switch crews, signal technicians, mechanical and engineering crews and other personnel. Virtually all railroad employees involved in operations carry their own portable radios, which are used in addition to the mobile radio units installed on the railroad industry's vehicular fleet (which includes not only locomotives but also track maintenance vehicles,

service trucks, and the like). In addition, specialized radio links support various types of defect detection and equipment monitoring functions, and also relay information pertaining to the railroad signal system, track switching functions, and remote control of train operations.

Railroad mobile radio usage is unique, and it is vitally important that whoever performs frequency coordination for railroad mobile radio channels be thoroughly grounded in and familiar with railroad operations. Except for that of the railroad industry, there is no private land mobile radio network whose coverage encompasses the entire continental United States (and Canada, as well) with a single *interoperable* channel plan. Although the nation's railroad business is conducted by a multiplicity of separate companies -- large freight railroads, regional and local "short line" operators, Amtrak, and local rail transit authorities -- the radio frequency infrastructure is, in operational terms, a single complex nationwide interrelated system. This is due to the track and equipment sharing arrangements between and among the freight railroads, as well as the track sharing arrangements between the freight railroads and commuter rail lines. Locomotives and other rail vehicles owned by each railroad routinely travel on the tracks and through stations, yards and terminals owned by other railroad companies, and those locomotives and other vehicles must be in radio contact with the appropriate rail dispatch centers and control centers of each "host" railroad at all times.10

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10 *See* letter to FCC Secretary from Mr. William W. Millar, President, American Public Transportation Association ("APTA"), April 16, 2003, expressing APTA's opposition to RM-10687 on behalf of its member public transit systems and commuter railroads, whose mobile radio systems "must be compatible and interoperable with those of the freight railroads on whose tracks they operate."

The map attached as Exhibit A shows the location of the base stations for the railroad industry's mobile radio network in the United States. These base stations are interconnected by long distance microwave and fiber networks to control centers and dispatch headquarters; and, although the base stations and control centers may be owned and operated by different railroads, functionally they all comprise a single nationwide network because of the requirement for interoperability among all railroads. Having a single, centralized frequency coordinator for the railroad industry assures that channel usage will be compatible across the network, so that trains operated by various railroads can communicate with dispatchers, yard crews, maintenance crews and other personnel at all locations throughout the nation.

The requirement for nationwide interoperability is not the only thing that makes railroad radio usage different from other business or industrial mobile radio applications. The rail industry's mobile radio systems are also very specialized in the functions they perform. A typical business or industrial mobile radio system serves primarily as a voice communication path between a dispatcher and a fleet of vehicles. But the railroad industry's mobile radio network does much more than this. Specialized functions include onboard communications (*e.g.*, two-way "end-of-train" devices, and links for remotely controlling unmanned mid-train locomotives from the lead locomotive). Also, in accordance with a 1966 Commission decision, the railroads use land mobile frequencies to interconnect "automatic, unattended, transmitting devices for detection of 'hot boxes,' that is, overheated journals, and other unsafe and malfunctioning equipment on railroad

rolling stock."11 Other radio-based defect detection systems include those that monitor brakes, dragging equipment, wheel impact, rockslide conditions, tunnel clearance and bridge status.

Successful frequency coordination for these specialized applications requires an in-depth knowledge of railroad operations. For example, a proposed frequency assignment for trackside defect detectors, tunnel clearance detectors, "hotbox talkers," or crossing integrity detection systems, would typically be construed by a coordinator not familiar with rail operations as a prohibited co-channel use resulting in a failed coordination, whereas a coordinator versed in railroad operating practices would know otherwise. Similarly, mobile and fixed railroad repeater applications require special knowledge and analysis by the frequency coordinator to ensure that mobile input frequencies as well as isolated mobile operations are protected.

A further (and very timely) example of the railroad industry's need for a single, centralized, knowledgeable frequency coordinator is the upcoming migration to narrowband technology contemplated by the FCC in its "refarming" proceeding for land mobile spectrum. Because the quantity of mobile radios in service in the rail industry is so vast (approximately 16,000 base stations nationwide, 45,000 mobile radios, and 125,000 portables), it will be necessary to change the equipment over an extended period of time, during which the old wideband and new narrowband radios will have to be intermixed in such a way as to not affect existing train operations and rail service. Obviously, careful frequency coordination will be extremely important during the

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11 Licensing of Unattended Stations Used in Conjunction with Railroad Right-of-Way Safety Inspection Devices, *Report and Order*, 5 FCC 2d 842 (1966).

transition due to potential interaction of adjacent narrowband and wideband radio systems and the consequent risk of destructive interference to ongoing operations. The migration to narrowband channelization will involve a complete "reshuffling" of channel assignments throughout the entire railroad mobile radio network in the United States and Canada,12 and will thus require a high degree of cooperation and consensus among the individual railroads regarding access to particular channels for various types of uses (*e.g.*, train communications, right-of-way maintenance communications, etc.). In this regard, the railroads intend to refine their existing system of intra-industry priorities for channel access based on type of usage in order to implement the new narrowband frequency assignment plan.13 Because it will be necessary for the railroads to work together to plan and implement the narrowband transition, it is essential for the frequency coordination function to be performed by an entity that not only is familiar with the railroad industry's operations and unique communications needs, but also is connected with, and answerable to, the railroads themselves.

III. AAR Possesses the Specialized Knowledge to Coordinate Railroad Frequencies

AAR is aware of no other organization that is as knowledgeable and proficient in the intricacies of railroad operations and the wireless communications requirements and

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12 *See* discussion, *infra*, at Section IV, concerning the international implications of railroad frequency coordination in the United States.

13 The revised system of internal priorities will be similar that which has been in use for some time in the railroad industry, as described in the 1977 report of the U.S. Department of Commerce, Institute for Telecommunications Science, prepared for the Federal Railroad Administration, "*VHF Communications Usage by U.S. Railroads*," Ref. FRA/RFA-78/02, at 62-63 (intra-industry priorities are "accomplished chiefly through frequency use assignments and through cooperative non-interference practices.").

plans of the railroad industry. AAR is a voluntary membership association whose members are railroad companies. AAR is controlled by the railroads; the railroads set AAR's agenda, and they fund its operations. In addition to performing the traditional functions of a national trade association, AAR also serves as the railroad industry's exclusive frequency coordinator, having performed that function for almost 60 years,14 and having been re-certified in that role most recently by the Commission in 1997.15

The close relationship between AAR and its members enables the railroads to (1) ensure that those who perform frequency coordination are knowledgeable and versed in railroad operations, and (2) control the working environment for the frequency coordination function. For example, the person who currently holds the lead frequency coordination position at AAR was employed in the railroad industry for over 15 years before joining AAR's coordination staff. In accordance with a decision in the mid-1990s by AAR's members, AAR's frequency coordination staff is housed organizationally as part of AAR's wholly-owned subsidiary, Transportation Technology Center, Inc. ("TTCI"), which is physically located in Pueblo, Colorado, at the railroad test track facility owned by the U.S. Department of Transportation. The proximity of the frequency coordination staff to the TTCI test facility is a major benefit because it enables them to

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14 *See* Allocation of Frequencies to Various Classes of Non-Governmental Services, *Report* on Docket No. 6651, May 21, 1945 (Appendix to Report on Frequency Modulation, Docket No. 5805), 39 F.C.C. 29, 241 (1945); *see also*, Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, 103 FCC 2d 1093, ¶ 94 (1986).

15 *Second Report & Order*, 12 FCC Rcd 14307, 14330 (1997).

have first-hand access to research, development and evaluation programs involving new technology for railroad applications, including communications technology.16

AAR's close identity with its member railroads assures that AAR is fully accountable to the railroad industry for its frequency coordination responsibility. In this regard, AAR's frequency coordination staff meets regularly with the communications managers of AAR's member railroads under the auspices of the industry's Wireless Communications Task Force ("WCTF"), which is responsible for planning and overseeing the industry's wireless communications networks. Also, AAR's frequency coordination staff keeps the railroads fully informed on a regular basis through monthly reports to the WCTF summarizing application processing data, workload statistics, and related information.

In addition to serving as frequency coordinator for the rail industry, AAR functions as overseer of the industry's interoperability (or "interchange") standards, including equipment standards for locomotives, freight cars, car components, signaling equipment and, most importantly for present purposes, communications and electronics equipment. These two roles – frequency coordinator and overseer of interoperability standards – are vitally linked and inseparable. The importance of this interrelationship for railroad mobile radio usage cannot be overstated, and is perhaps best illustrated by an

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16 TTCI focuses on programs that enhance railroad safety, reliability and productivity. In addition to testing and evaluating new designs for signal and safety devices, track structure, vehicles, brake systems, etc., TTCI has a cooperative arrangement with FRA for testing and evaluating railroad applications of mobile communications technology (current examples include checkout and evaluation of "Project 25" radios and antennas, and evaluation of a prototype locomotive-based "Communications Management Unit").

example. For the past several years AAR, working with and through its members, has been engaged in discussions leading to the adoption of an industry-wide standard for the next generation of narrowband voice radio equipment in the VHF band. The decision on an industry-wide radio equipment standard has also entailed, necessarily, corresponding decisions for an industry-wide channel allocation and assignment plan and ongoing work on an industry-wide narrowband migration "path." This type of activity – achieving industry-wide consensus for an equipment standard as well as for a new industry-wide channel plan -- could only have been carried out with the participation of an entity such as AAR that is thoroughly familiar not only with the day-to-day operations of the railroad industry, but also with the unique *frequency coordination* issues presented by the industry's current and projected frequency usage.

When it decided in 1997 to retain exclusivity in frequency coordination for certain types of "quasi-public safety" industrial communications systems, one of the Commission's rationales for conferring special status on them was that "[o]ftentimes these communications systems are employed to meet Federal regulations."17 That is certainly the case with railroad mobile radio systems. In 1992 Congress passed the Rail Safety Enforcement and Review Act,18 which required the Department of Transportation to conduct an inquiry and report to Congress on the safety benefits of railroad communications networks, and to determine whether their use should be required by federal law. In response to the Congressional directive, the FRA conducted a rulemaking proceeding that resulted in the adoption in 1998 of new safety-related regulations

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17 *Second Report & Order, supra*, at 14329.

governing railroad radio usage, including coverage requirements for radios installed on locomotives and carried by maintenance-of-way crews.19 In addition, the FRA has adopted special rules for using radio for reporting railroad emergencies; initiating, receiving, monitoring and terminating radio transmissions; testing radio equipment; using radio for directing certain types of train movements and for communicating signal status; and for transmitting train movement authorizations.20 Other frequency coordinators such as ITA are not versed in these special regulatory requirements governing railroad radio use. In contrast, AAR participated extensively in the FRA proceedings that led to the adoption of these rules and is thoroughly familiar with them, and is therefore in a position to be cognizant of relevant FRA radio-related safety regulations in performing its frequency coordination function for the railroads.

In summary, because it is an organization comprised of railroads, funded by railroads and accountable to railroads, AAR is uniquely qualified to serve in the capacity as the industry's frequency coordinator. Unlike any other frequency coordination organization, AAR possesses the knowledge and expertise to meet the special needs of the railroad industry's mobile communications systems.

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18 P.L. No. 102-365, 106 Stat 972 (1992), 45 U.S.C. Sec. 431 (1993).

19 49 C.F.R. §§ 220.5, 220.9 and 220.11.

20 *Id.* at §§ 220.13 through 220.61. The FRA has also adopted regulations governing radio-equipped one-way and two-way "end-of-train" devices for monitoring and activating brake systems aboard trains. *See* 49 C.F.R. § 232.19 *et seq.*,

IV. International Comity Requires That There be a Single Railroad Coordinator in the United States

The railroads in the United States and Canada share a common channel allocation plan for mobile radio frequencies at 160 MHz, 450 MHz and 900 MHz. In Canada, the national communications regulatory authority, Industry Canada, has issued a single, multi-band, nationwide geographic license to the Railway Association of Canada ("RAC"), which is AAR's Canadian counterpart. (This single license, which is used by all Canadian railroads, is similar to the "ribbon license" at 900 MHz that AAR holds on behalf of U.S. railroads. 21) In addition to holding the single, nationwide railroad license, RAC has been designated by Industry Canada as the exclusive frequency coordinator for the Canadian railroads.

In a letter to the Commission dated April 7, 2003, Mr. R. A. Rowat, President and Chief Executive Officer of RAC, expressed the RAC's opposition to the ITA proposal (a copy of Mr. Rowat's letter is attached as Exhibit B). According to Mr. Rowat, the reasons for RAC's opposition are twofold. First, allowing multiple frequency coordinators for railroad channels in the U.S. "would unnecessarily complicate and impede the consultative process for near-border and through-service applications" involving Canadian and U.S. rail operations. The railroad frequency coordinators in the U.S. and Canada historically have had a close working relationship with each other, and are able to perform cross-border coordinations in a timely and efficient manner because

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21 Modification of Licenses for Use in Positive Train Control Systems, *Order,* 16 FCC Rcd 3078 (WTB 2001).

each is "knowledgeable about the unique operational requirements of the railroad industry." Mr. Rowat further states that "these benefits would be lost if the RAC were required to deal with a multiplicity of frequency coordinators in the U.S., especially if eligibility were opened up to U.S. frequency coordinators with no knowledge, expertise or experience in railroad operations."

Second, Mr. Rowat states that allowing multiple railroad coordinators in the U.S. "would inhibit significantly the ability of Canadian and U.S. railroads to accomplish cohesive and orderly migration to narrowband channelization as envisioned by the FCC in its 'refarming' decision and by Industry Canada in its comparable proceeding involving rechannelization of the land mobile bands in Canada." The transition to narrowband for the railroads in Canada and the U.S. will be "a long, gradual migration" during which "careful frequency coordination [between Canada and the U.S.] will be extremely important because of the potential interaction of adjacent narrowband and wideband radio systems and the consequent risk of destructive interference to ongoing operations." Mr. Rowat points out that RAC and AAR, together with their member railroads, have been working on a narrowband conversion and migration plan for some time, with considerable success thus far. But he warns that "if multiple frequency coordinators were to be inserted into the equation on the U.S. side of the border, the process of planning and implementing the migration would become unduly complex and unmanageable, and RAC's effectiveness in implementing narrowband conversion in Canada would be seriously jeopardized."

AAR echoes Mr. Rowat's concerns. For decades, RAC and AAR have worked closely and effectively together on railroad frequency coordination. At present, AAR's

lead frequency coordinator typically confers with his Canadian counterpart at RAC on the average of two times a week on a variety of coordination issues. AAR agrees with RAC that this consultative process (particularly as it pertains to the upcoming migration to narrowband technology) would be unmanageable and chaotic if multiple frequency coordinators were allowed to participate on the U.S. side, and urges the Commission to maintain the present system of symmetrical frequency coordination for railroad channels in the U.S. and Canada with a *single* railroad coordinator in each country.

V. Proper Coordination of Railroad Channels is All the More Critical Because of Homeland Security Concerns

The link between radio and railroad safety has been consistently and repeatedly recognized over the years by Congress and Federal agencies, including the FCC. When it first set aside frequencies for railroad use in the 1940s, the Commission recognized that railroad mobile radio systems "would contribute to the safety of life and property, both in preventing rail accidents and in reducing the seriousness of injury and damage after accidents by permitting the prompt summoning of aid."22 In 1966, the Commission acknowledged the important safety benefits that would result from allowing the railroads to use land mobile frequencies in connection with automatic "hot box" detectors and similar safety devices embedded throughout the rail network.23 In 1988, the Commission emphasized the critical role of radio in railroad safety when it granted a

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22 General Mobile Radio Service, 13 FCC 1190, 1199-1200 (1949).

23 Licensing of Unattended Stations Used in Conjunction with Railroad Right-of-Way Safety Inspection Devices, *Report and Order*, 5 FCC 2d 842, 843 (1966).

waiver to AAR for the use of six channel pairs at 900 MHz for an "Advanced Train Control System."24 And in 1997, when it confirmed that AAR should continue as the exclusive frequency coordinator for railroad channels, the Commission's rationale was that the railroads use radio "as a critical tool for responding to emergencies" and for maintaining safety in day-to-day operations in which there is "little or no margin for error."25

Congress underscored the important role of radio in railroad safety in 1992 with the enactment of the Rail Safety Enforcement and Review Act,26 and again in 1997 with the amendment to Section 309(j)(2) of the Communications Act (included as part of the Balanced Budget Act of 1997) so as to exempt on grounds of public safety certain users of radio frequency spectrum, including the railroads, from the Commission's spectrum auction authority.27

If safety was the paramount rationale for effective railroad mobile radio communications prior to September 11, 2001, it is all the more so now, in our current post-9/11 environment. The terrorist attacks against the United States have heightened

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24 Waiver of the Commission's Rules to License Use of Six Conventional 900 MHz Frequency Pairs for Advanced Train Control System, *Order*, 3 FCC Rcd 427 (PRB 1988); *see also*, Modification of Licenses for Use in Positive Train Control Systems, *Order,* 16 FCC Rcd 3078 (WTB 2001).

25 *Second Report & Order, supra*, at 14329.

26 *See* n.18, *supra.*

27 47 U.S.C. Section 309(j)(2). According to the Conference Report accompanying the 1997 Balanced Budget Act amendments, the exemption of Section 309(j)(2) extends to private internal radio systems operated by railroads, metropolitan transit systems, utilities, pipelines, private ambulance companies, volunteer fire departments and providers of emergency road services. H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997).

dramatically the importance of interference-free mobile radio links for the nation's railroads.28 Shortly after the events of 9/11, AAR established a direct interface with the Intelligence and Security Office of the Department of Transportation and the National Infrastructure Protection Center ("NIPC") for alert and warning information. AAR is a member of the FBI's National Joint Terrorism Task Force and interfaces with various intelligence agency representatives to support national security objectives. Moreover, AAR is a participant in the Regional Information Sharing System ("RISS") and the Antiterrorism Information Exchange ("ATIX").

In support of the foregoing initiatives, AAR has established a DOD-certified Operations Center in Washington, D.C. that is staffed 24 hours a day, seven days a week to provide warning, alert and analysis pertaining to threat information, terrorist incidents and crisis situations affecting the nation's railroad infrastructure. The critical "last mile" in the communications networks supporting AAR's alert and warning function is the mobile radio link between the dispatcher and the locomotive crew. At a time when the nation's rail system -- which is absolutely critical to the national economy -- is subject to possible terrorist threat and attack, it is now more important than ever that the railroads' mobile radio channels remain clear and free from interference. Obviously, proper

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28 This was recognized by the National Telecommunications and Information Administration ("NTIA") in its report on "Current and Future Spectrum Use by the Energy, Water and Railroad Industries," NTIA Special Publication 01-49 (2002). NTIA acknowledged "the vital roles the railroad, water, and energy industries play in the Nation's critical infrastructure" and stated that "[t]he events of September 11, 2001, have underlined the importance of these industries and the role that they play not only in our daily lives, but in times of disaster response and recovery."

frequency coordination is essential for ensuring the continued availability of these channels, interference-free. There is simply too much at stake for the Commission to entrust the frequency coordination function to an organization such as ITA that possesses no knowledge, experience or insight regarding the specialized requirements of railroad communications.

VI. ITA's Request is Procedurally Defective

On February 6, 2003, AAR joined with AAA and UTC in a preliminary joint response to ITA's request ("Joint Response"), in which the parties demonstrated that ITA's request was procedurally defective for several reasons, including that it does not meet the Commission's requirements for a rulemaking petition. Rather than repeat those arguments here, AAR hereby incorporates by reference the Joint Response and the arguments therein concerning the procedural infirmities of ITA's request. A copy of the Joint Response is attached as Exhibit C.

VII. Conclusion

Allowing organizations that know nothing about railroad operations or railroad communications requirements to perform frequency coordination for railroad mobile radio channels will inevitably result in improper coordination decisions which will, in turn, lead to disruption of critical railroad communications links. Clearly, that result

would not be in the public interest. Accordingly, for the reasons set forth in this Opposition, AAR urges the Commission to deny ITA's request.

Respectfully submitted,

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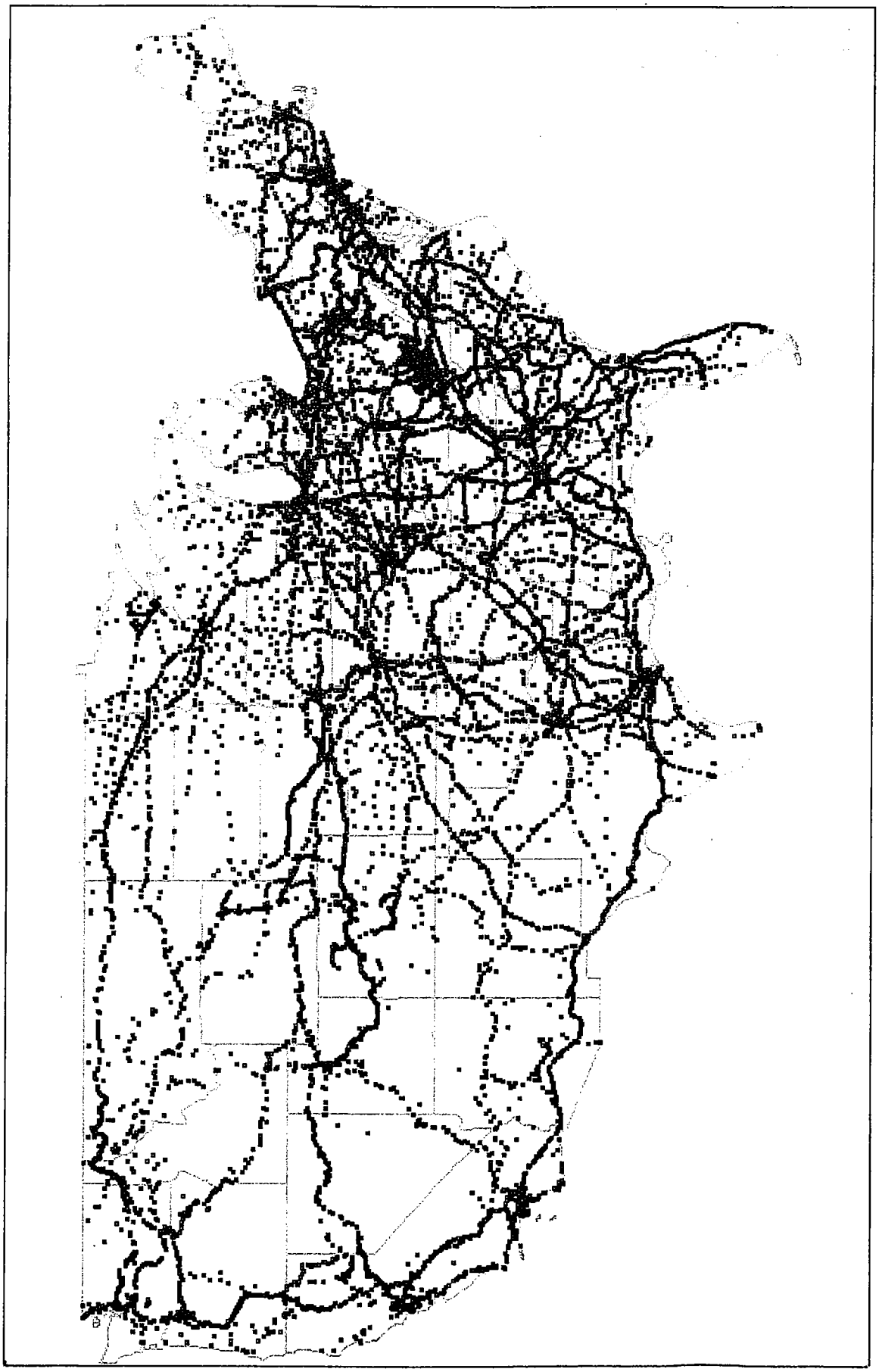
Its Attorneys

Date: April 23, 2003

Exhibit A: Map Showing U.S. Nationwide Railroad Base Station Network
Exhibit B: Letter to FCC from Railway Association of Canada, April 7, 2003
Exhibit C: Joint Response of AAA, AAR and UTC filed February 6, 2003

Exhibit A to Opposition of
Association of American Railroads
RM-10687
April 23, 2003

RAILROAD BASE STATION LOCATIONS



THE RAILWAY ASSOCIATION OF CANADA
L'ASSOCIATION DES CHEMINS DE FER DU CANADA

April 7, 2003

Ref.: C.3-17

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Ms. Dortch:

Subject: Opposition to ITA Petition (RM No. 10687)

The Railway Association of Canada ("RAC") hereby registers its opposition to the petition of the Industrial Telecommunications Association ("ITA") to become a certified frequency coordinator for railroad mobile radio channels in the United States.

RAC's members consist of the freight, commuter, tourist and intercity railways of Canada. In addition to representing its members in policy development and advocacy before governmental bodies, RAC serves as the exclusive frequency coordinator for the land mobile radio spectrum allocated and licensed by Industry Canada for use by the Canadian railroads.

Due to extensive near-border and cross-border traffic and operations, the mobile radio systems of railroads in the United States and Canada are essentially interoperable. In this regard, the U.S. and Canadian railroads share a common frequency plan for land mobile radio channels at 160 MHz, 450 MHz and 900 MHz, with RAC and the Association of American Railroads ("AAR") each performing the frequency coordination function for channels used, respectively, in Canada and the United States.

There are two reasons why RAC opposes the proposal of ITA to open up the railroad frequency coordination function in the U.S. to multiple coordinators. First, it would unnecessarily complicate and impede the consultative process for near-border and through-service applications. Historically, the frequency coordinators at RAC and AAR have engaged in regular and routine consultation with each other on applications of common concern. This close consultative relationship has resulted in timely and efficient coordination decisions and effective resolution of potential conflicts. These benefits are attributable in large measure to the fact that the frequency coordinators at RAC and AAR are knowledgeable about the unique operational requirements of the railroad industry. These benefits would be lost if the RAC were required to deal with a multiplicity of frequency coordinators in the U.S., especially if eligibility were opened up to U.S. frequency coordinators with no knowledge, expertise or experience in railroad operations.

Second, it would inhibit significantly the ability of Canadian and U.S railroads to accomplish cohesive and orderly migration to narrowband channelization as envisioned by the FCC in its "refarming" decision and by Industry Canada in its comparable proceeding involving rechannelization of the land mobile bands in Canada. This will be a long, gradual migration by railroads on both sides of the border, and will require close and careful frequency coordination for railroad radio users in Canada and the United States, as explained below.

The migration to narrowband (12.5 kHz channel width) contemplated by Industry Canada and the FCC envisaged a fairly simple replacement of wideband radios with narrowband units. Although that conversion method may be practical for users having a relatively small number of radio units operating in a limited geographic area, it is not workable for railways, which have a very large radio inventory that must be changed without affecting existing train operations that are supported by the rail industry's nationwide mobile radio networks in Canada and the U.S. Because the quantity of radio equipment in the rail industry (both base stations and mobile units) is so vast, the conversion necessarily will be gradual, which means that wideband and narrowband radios will be intermixed during the lengthy period of time required to complete the conversion.

During the transition, careful frequency coordination will be extremely important because of the potential interaction of adjacent narrowband and wideband radio systems and the consequent risk of destructive interference to ongoing operations. In other words, the common Canadian-U.S. channel plan will require that railroad communications engineers and planners in both countries work closely together in implementing the migration to narrowband.

RAC strongly believes the migration can be successful in both countries only if there is a single point of contact on each side regarding the frequency assignment plan during the transition. In this regard, RAC's Class 1 freight railroad members (Canadian National and Canadian Pacific) also are members of AAR, and for some time RAC has been working with AAR on overall frequency planning for the narrowband conversion and migration, starting in the early 1990s with the joint "North American Railroad Radio Network" ("NARRN") project, and more recently as a participant in AAR's Wireless Communications Task Force ("WCTF"). This relationship has thus far worked very well. But if multiple frequency coordinators were to be inserted into the equation on the U.S. side of the border, the process of planning and implementing the migration would become unduly complex an unmanageable, and RAC's effectiveness in implementing narrowband conversion in Canada would be seriously jeopardized.

Thank you for providing RAC the opportunity to express its views in this proceeding.

Sincerely,

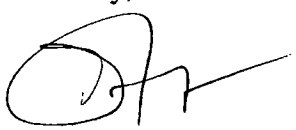


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Exhibit C to Opposition of
Association of American Railroads
RM-10687
April 23, 2003

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)
	)
Informal Request for Certification	)
To Coordinate the Power Radio Service,	)
Railroad Radio Service,	)
And Automobile Emergency Radio Service	)
Under Part 90 of the Commission's Rules	)

RESPONSE TO INFORMAL REQUEST FOR CERTIFICATION OF THE INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION

AMERICAN AUTOMOBILE ASSOCIATION

ASSOCIATION OF AMERICAN RAILROADS

UNITED TELECOMMUNICATIONS COUNCIL

February 6, 2003

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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And Automobile Emergency Radio Service	)
Under Part 90 of the Commission's Rules	)

RESPONSE TO INFORMAL REQUEST FOR CERTIFICATION OF THE INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION

The American Automobile Association ("AAA"), the Association of American Railroads ("AAR"), and the United Telecommunications Council ("UTC") (collectively "the Respondents"), by their attorneys and pursuant to Section 1.45(b) of the Commission's rules, 1/ hereby submit their joint response to the Informal Request recently filed by the Industrial Telecommunications Association. 2/ The Informal Request is a procedurally defective vehicle that seeks to circumvent the Commission rules and policies with respect to frequency coordination for auto emergency, railroad, and utility infrastructure radio services. Moreover, the

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1/ 47 C.F.R. § 1.45(b).

2/ Informal Request of the Industrial Telecommunications Association for Certification to Coordinate the Power Radio Service, Railroad Radio Service, and Auto Emergency Radio Service Under Part 90 of the Commission's Rules (filed Jan. 27, 2003) ("Informal Request").

Informal Request completely fails to justify overturning the Commission's rules and policies for coordination of these radio service channels, which were specifically designed to safeguard the special needs of our nation's critical quasi-public safety services. For the reasons set forth below, Respondents urge the Commission to dismiss or deny the Informal Request.

I. BACKGROUND: THE RESPONDENTS' ROLES AS EXCLUSIVE FREQUENCY COORDINATORS

As a result of the Commission's extensive Refarming proceeding, Respondents have been certified by the Commission as the exclusive frequency coordinators for the Private Land Mobile Radio ("PLMR") bands allocated to the eligible applicants in the emergency road service, railroad, and utility industries. 3/ In fact, the Commission relied extensively upon the special needs of the Respondents' respective industries when it designated Respondents as the exclusive frequency coordinators for the Auto Emergency Radio Service ("AERS"), Railroad Radio Service, and Power Radio Service channels, as discussed below.

3/ *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Report & Order*, 12 FCC Rcd 14307, 14316-17, 14329-30 (1997) ("*Second Report & Order*"); Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, *Second Memorandum Opinion & Order*, 14 FCC Rcd 8642, 8650-52 (1999) ("*Second Memorandum Opinion & Order*") (collectively, the "Refarming Orders").

A. American Automobile Association ("AAA")

The American Automobile Association ("AAA"), which observed its 100th anniversary in 2002, is a not-for-profit federation of 70 auto clubs with more than 45 million members. AAA's primary mission is to promote highway driver and vehicle safety, including the provision of emergency road services. AAA responds to over 30 million road service calls annually, more than 80,000 a day. Almost one-third of these calls involve an immediate threat to life or property, and AAA must respond on a time-critical basis. In addition to responding to emergency calls from its members, AAA works with state and local governments in providing traffic incident management and disaster relief, easing the burden on financially-strapped state and local agencies.

AAA has been using two-way voice radios for mobile communications since the early 1940s. In the 1950s, the Commission established specific frequencies for auto clubs by creating the Automobile Emergency Radio Service ("AERS"). In fact, AAA coordinated road service providers' FCC radio station applications prior to the organized frequency advisory committees established by the Commission in 1986, and has served as the frequency advisory committee for the AERS frequencies. It is beyond challenge that AAA best understands the road service business and how the AERS frequency assignments can be used efficiently and effectively.

In fact, Congress has recognized AAA's role as a quasi-public safety provider due to its provision of emergency road services and the important public

safety function it provides. 4/ The Commission has also formally recognized AAA as a quasi-public safety entity and appointed AAA as the exclusive frequency coordinator for the AERS channels. 5/ In light of this designation, AAA is able to continuously track the use of the AERS channels by auto emergency responders. Needless to say, this function is paramount to AAA's ability to stay in constant contact with its service vehicles around the country. In no uncertain terms, AAA's role as frequency coordinator for the AERS channels is vital to AAA's public safety function.

B. Association of American Railroads ("AAR")

The AAR is a voluntary non-profit membership organization whose freight members generate approximately 97% of the total operating revenues of all freight railroads in the U.S. In addition, Amtrak, the nation's principal intercity passenger railroad, is a member of AAR. AAR has been certified by the Commission as the frequency advisory coordinator for the land mobile frequencies used by the railroad industry for dispatcher-to-train links, onboard communications, train-to-train communications, advanced train control systems and other industry-specific uses of spectrum. 6/

4/ 143 Cong. Rec. H6029, H6173 (July 29, 1997).

5/ *See Second Memorandum Opinion & Order*, 14 FCC Rcd at 8650-52.

6/ *See, e.g.*, Frequency Coordination in the Private Land Mobile Radio Services, *Report & Order*, 103 FCC 2d 1093, ¶ 94 (1986); *Second Report & Order*, 12 FCC Rcd at 14324, 14330; Waiver of the Commission's Rules to License Use of Six Conventional 900 MHz Frequency Pairs for Advanced Train Control System, *Order*,

Radio communications systems are a vital component of the nation's railroad operations, most of which are safety-related. Indeed, the importance of safety in the railroad industry is evident from the very nature of the day-to-day operations of the business, *i.e.*, the constant movement of people, heavy equipment and freight (including hazardous or toxic industrial materials such as liquefied petroleum gas, chlorine, and molten sulfur). The safe and efficient operation of today's passenger and freight rail transportation networks would be impossible without reliable and effective mobile radio communications. 7/

Although the nation's railroad business is conducted by a multiplicity of separate companies, large and small -- including large freight railroads, regional and local "short line" operators, and local rail transit authorities -- the radio frequency infrastructure is, for all practical purposes, a single complex nationwide interrelated system. This is due in large measure to the track and equipment sharing arrangements between and among the freight railroads, as well as the track sharing arrangements between the freight railroads and Amtrak. A locomotive originating a trip on the west coast of the U.S. may travel all the way to

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3 FCC Rcd 427 (PRB 1988); Modification of AAR's Licenses for Use in Positive Train Control Systems, *Order,* 16 FCC Rcd 3078 (WTB 2001).

7/ The link between rail safety and radio is well established in federal legislation and regulation. For example, pursuant to the 1992 Rail Safety Enforcement Act, 49 U.S.C. § 20103(a), the Department of Transportation, acting through its Federal Railroad Administration, has adopted regulations governing the use of radio for safety-related purposes in the rail industry. *See, e.g.*, 49 C.F.R. § 220.9 requiring "communications redundancy" aboard locomotives, and 49 C.F.R. § 232.19 *et seq.*, governing operation of radio-equipped one-way and two-way "end-of-train" devices.

the east coast, traversing the property of various railroads along the way, and must be in radio contact with the appropriate rail dispatch centers and control centers of each host railroad for the entire trip. Nationwide interoperability of railroad radio equipment and corresponding centralized planning for frequency use are essential for the system to function properly. In this regard, it is vitally important that whoever performs the frequency coordination function be thoroughly grounded in and familiar with railroad operations.

In addition to serving as frequency coordinator for the rail industry, AAR also functions as overseer of the industry's interoperability (or "interchange") standards, including standards for locomotives, freight cars, car components, signaling equipment and, most importantly for present purposes, communications and electronics equipment. These two roles – frequency coordinator and overseer of interoperability standards – are vitally linked and inseparable. The importance of this interrelationship for railroad mobile radio usage cannot be overstated, and is perhaps best illustrated by reference to a recent example. For the past several years AAR, working with and through its members, has been engaged in discussions leading to the adoption of an industry-wide standard for the next generation of narrowband voice radio in the VHF band; those discussions have necessarily involved the corresponding adoption of an industry-wide channel plan and ongoing work on an industry-wide migration plan. This type of activity could only have been carried out by an entity that was thoroughly familiar not only with the day-to-day operations of the railroad industry, but also with the unique

frequency coordination issues raised by the industry's current and projected frequency usage.

C. United Telecommunications Council ("UTC")

Since 1948, UTC has been the national representative on communications matters for the nation's electric, gas, and water utilities and natural gas pipelines. Approximately 1,000 such entities are members of UTC, ranging in size from large combination electric-gas-water utilities that serve millions of customers, to smaller, rural electric cooperatives and water districts that serve only a few thousand customers each. Together with the members of the Critical Infrastructure Communications Coalition ("CICC"), 8/ UTC represents the telecommunications and information technology interests of virtually every utility, pipeline and other critical infrastructure ("CI") entity in the country.

In spite of the differences among these many systems, there is an overriding similarity: CI systems have extensive telecommunications requirements. The expansive nature of their infrastructure, whether including transmission lines, water pumps or electric substations, requires maintenance, remote control and monitoring, and repair. Such needs can be met effectively only through

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8/ The CICC is composed of the following organizations: The American Gas Association, the American Petroleum Institute, the American Public Power Association, the American Water Works Association, the Association of American Railroads, the Edison Electric Institute, the Interstate Natural Gas Association of America, the National Association of Water Companies, the National Rural Electric Cooperative Association and UTC.

telecommunications -- and traditionally, the most critical component in a CI entity's telecommunications arsenal has been its wireless network. 9/

Telemetry services are the communications backbone for remote monitoring and control of critical infrastructure, and PLMR services are the network nerve-endings for voice dispatch and data applications for routine maintenance and emergency restoration. "Any failure in their ability to communicate by radio could have severe consequences on the public welfare." 10/ Therefore, network reliability and integrity must be maintained to the highest standards for the safety of the work crews and the public that relies on the services that they help deliver. 11/

UTC, like the other Respondents, was among the original representative associations certified as frequency coordinators in 1986; however,

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9/ In addition to needing access to wireless voice communications, CI entities have a separate requirement: control over the communications system, to ensure safety and reliability. This control also can be satisfied only through the use of private radio spectrum.

10/ *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz; Petition for Rule Making of The American Mobile Telecommunications Association, *Report & Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 22709, 22746 at ¶76 (2001)("*BBA97 Report & Order*").

11/ For instance, powerline carrier (PLC) facilities provide an essential link to the devices that monitor and control the safe, reliable and widespread delivery of affordable electric services to the public at large. These mission-critical systems are designed to trip electric relays less than a second after a fault occurs on the electric grid in order to prevent widespread outages that could occur. Although basic in design, these systems have been used for decades and have helped to keep electric service affordable and reliable in urban and rural areas.

UTC had been providing coordination for decades prior to its certification. UTC's understanding of CI telecommunications systems goes far beyond traditional land mobile voice systems, to incorporate fixed wireless -- point-to-point and point-to-multipoint, within a variety of FCC services and frequency allocations -- mobile data networks, and even non-spectrum-based elements such as optical fiber networks. As an example of the association's services to its members, UTC currently is the only certified frequency coordinator offering coordination of newly allocated telemetry bands at 217-220 MHz and 1427-1432 MHz. And pursuant to a Memorandum of Understanding with the National Telecommunications and Information Administration, UTC maintains a database of PLC frequencies and their use by utilities.

These descriptions crystallize the rationale behind the Commission's designation of Respondents as frequency coordinators for the AERS, Railroad Radio Service, and Power Radio Service channels, and the important public safety considerations underlying its decision. The Commission has long recognized the special circumstances surrounding these channels and has properly afforded the Respondents with the care and responsibility for their coordination. Certainly, ITA cannot be allowed to circumvent the Commission's reasoned analysis with a casually styled "Informal Request." For the reasons stated below, the Commission must dismiss or deny the Informal Request.

II. THE INFORMAL REQUEST IS PROCEDURALLY DEFECTIVE

Although styled as an "Informal Request," ITA's clear desire to bypass the strict and unconditional concurrence requirements found in Part 90 of the Commission's rules is best characterized as an "end run" effort to reverse long-standing Commission rules and policy. It is totally inappropriate for ITA to request certification to coordinate the AERS, Railroad, and Power frequencies through the means of an Informal Request, which ITA claims can be handled by the Wireless Telecommunications Bureau (the "Bureau") on an *ad hoc* basis. 12/ In fact, the Informal Request presents new and novel questions of law and policy that cannot be resolved under Commission precedent and guidelines, and are thus outside the delegated authority of the Bureau. 13/

Moreover, were the Bureau to proceed by virtue of this Informal Request, it would violate the Commission's rules. The Informal Request, at a minimum, seeks a modification of Part 90 of the Commission's rules – and, a request to modify a rule must be addressed at the Commission level. 14/ ITA attempts to justify its request by stating that the eligible parties for the designated frequencies will not change, only the number of coordinators. Yet, this proposed

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12/ *See* Informal Request at 4-5. Indeed, ITA did not even serve Respondents with copies of its pleading.

13/ *See* 47 C.F.R. § 0.331(d).

14/ *See* 47 C.F.R. §§ 1.401, 1.407, 1.411.

competition between coordinators is expressly contrary to the current rules, and the Bureau is precluded from reversing this policy.

In an implicit acknowledgment of the insufficiency of its chosen vehicle, ITA requests, in a footnote, that the Commission treat the filing as a Petition for Rulemaking under Section 1.401 of its rules "[i]n the event the FCC believes a rulemaking proceeding is necessary." 15/ First, a mere footnote cannot correct the myriad procedural and substantive infirmities the Informal Request presents. Second, as noted previously, a petition for rulemaking would be properly subject to the strict procedural requirements associated with such a petition. 16/ For example, at a minimum, the Commission would release a "Public Notice" of the petition for rulemaking and thereby provide an opportunity for public comment well in advance of any Commission action. 17/ ITA cannot avoid the strictures of the Commission's rulemaking process by styling its filing as an Informal Request.

Finally, ITA's Informal Request does not explain why a new proceeding is necessary to review the Commission's established policy, nor does it seek broad relief on behalf of similarly situated parties. Instead, ITA appears to seek special relief from the Commission's rules for its own pecuniary benefit, without explaining why such relief is warranted. For example, nowhere in its Informal Request does ITA acknowledge that it is acting as the *sole* coordinator of the Petroleum Industry

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15/ Informal Request at n.1.

16/ *See infra* at n.14.

17/ *See* 47 C.F.R. §§ 1.403, 1.405.

frequencies on behalf of the American Petroleum Institute, which is the exclusive coordinator of the frequencies designated for the petroleum industry. Nor, interestingly, does ITA request that the petroleum industry frequencies also be opened for competition.

For these reasons, the Informal Request is a procedurally defective pleading that should be dismissed or denied.

III. THE INFORMAL REQUEST FAILS TO JUSTIFY OVERTURNING WELL-ESTABLISHED RULES AND POLICY

If granted, the Informal Request would significantly alter the present rules, which were adopted by the full Commission after years of opportunity for public comment. As ITA knows, the Refarming Orders were issued after a thorough airing of the issues and careful, deliberate consideration by the Commission and all interested parties. The Informal Request fails to justify overturning the well-established rules and policies of the Refarming Orders.

In reaching its conclusions with respect to Refarming, the Commission specifically stated that, "using coordinators who are knowledgeable with such special communications needs is the best way to protect these operations... and outweighs any potential benefits that may be gained through a competitive frequency coordination process." 18/ This language evidences the Commission's two primary rationales: first, to designate coordinators with specific knowledge of the needs of the quasi-public safety services; and second, to disallow competition

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18/ *Second Report & Order*, 12 FCC Rcd at 14330.

among frequency coordinators for the frequencies allocated to such services. Indeed, under the Commission's rules, a party that wishes to coordinate frequencies allocated to the four quasi-public safety services must first seek the written consent of the designated coordinator. 19/

Despite the Commission's well-articulated and long-standing rationale, ITA, through its Informal Request, seeks to turn the Commission's policy on its head. By asking the Bureau to certify it as coordinator for the AERS, Railroad, and Power channels because it "possesses the technical experience to meet the Commission's requirements[,]" 20/ ITA has strategically chosen to ignore both of the Commission's primary rationales in the Refarming Orders. Specifically, ITA provides no justification or evidence that would support a finding that the channels at issue should be opened to competition, nor that ITA would be the best candidate to compete with the designated coordinators for these channels. The Informal Request presents no substantive evidence on either of these points, but instead baldly suggests that ITA is qualified to handle the task and thus the Commission should allow it to do so.

Moreover, ITA's suggestion that competition among coordinators for the AERS, Railroad, and Power channels is in the public interest because it will offer applicants "increased speed-of-service, decreased costs, and better service for

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19/ *See* 47 § C.F.R. 90.35 (b)(2)(ii).

20/ *See* Informal Request at 9.

the customer" 21/ is completely without support. First, ITA provides no evidence whatsoever of complaints or problems related to speed-of service, quality of service, or costs under the current coordination system. 22/ Instead, ITA mistakenly attempts to use the public interest determinations of the Commission in separate, unrelated decisions in the 800 MHz and 900 MHz context. 23/ Yet ITA is well aware that the full Commission has already addressed and denied arguments touting the benefits of competition in the PLMR bands for the four specific industries with "quasi-public safety" components.

21/ Informal Request at 11.

22/ The language at pages 10 and 11 of the Informal Request is generalized and self-serving, as well as contrary to Commission policy. As noted previously, despite its hyperbole about the benefits of competition, ITA does not advocate that the petroleum channels for which it is the exclusive coordinator on behalf of the American Petroleum Institute also be opened to competition. Nor does ITA indicate interest in coordinating the Alarm channels. Perhaps this is because the Alarm channels do not generate much volume in terms of frequency coordination and the Commission's rules specify that the Alarm channels may only be used to provide alarm services. This, too, seems to belie ITA's interest in creating competition.

23/ *See* United Telecom Council Informal Request For Certification As A Frequency Coordinator in the PMLR 800 MHz and 900 MHz Bands, *Order*, 16 FCC Rcd 8436 (WTB 2001)("*800 & 900 MHz Order*"). ITA places undue and haphazard reliance on the Bureau's decision to certify coordinators in the 800 and 900 MHz bands that had been formerly certified to coordinate frequencies below 512 MHz. In the *800 & 900 MHz Order*, the Bureau simply extended the Commission's policy determination that frequency coordination competition is generally beneficial when such competition is limited to frequencies that are not integral to public safety. In reaching its decision, the Bureau did not go beyond existing Commission precedent because UTC's request did not present any new or novel questions of law or fact. Thus, the Bureau was able to proceed on an *ad hoc* basis. In stark contrast, the Informal Request very specifically asks the Bureau to go beyond the parameters that the Commission has previously allowed.

Simply stated, ITA has not made the necessary showing to justify a change in the PLMR frequency coordination rules and policy established through numerous proceedings, each of which was subject to the procedural guidelines meant to foster Commission decision-making on the basis of a full and accurate record. To the extent that ITA seeks reconsideration of the rules and policies developed in the Refarming proceeding, the period for filing petitions for reconsideration has long since closed. 24/ Even so, ITA presents no justification for revisiting the Commission's decisions in this area, nor any evidence of a change in circumstances since the Commission established the exclusive coordination system for the four designated public safety frequency coordinators.

Indeed, as demonstrated above, the Commission has already specifically considered and addressed the public interest concerns raised by ITA. The agency resoundingly concluded (and reaffirmed) that designating an exclusive frequency coordinator for industries with a special relationship to public safety ensures quality through increased reliability and reduced interference. In reaching its determination, the Commission very carefully balanced the importance of solid, reliable service for the quasi-public safety industries against the general benefits of competition. 25/ To the extent that ITA seeks reconsideration of this decision, the

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24/ 47 U.S.C. § 402(a), (c); 47 C.F.R. § 1.429(d); *see also, e.g.*, Implementation of the AM Expanded Band Allotment Plan, *Memorandum Opinion & Order*, 13 FCC Rcd 21872, 21873-74, ¶ 6 (1998).

25/ *See Second Report & Order*, 12 FCC Rcd at 14315-18.

opportunity to do so has long since passed. 26/ Indeed, not even the Commission, let alone the Bureau, can make so fundamental a change to its rules as that informally requested by ITA. 27/

Finally, Respondents note that the public interest considerations and policies supporting the findings of the Commission in its Refarming decisions are even stronger today than when the original Orders were issued. Indeed, public safety concerns have risen to a new level of prominence following the terrorist attacks of September 11, 2001. The nation is reminded almost daily of the vulnerabilities surrounding its critical infrastructure, including the transportation and utility industries and the automobile emergency response services. 28/ The increased awareness surrounding the viability and reliability of the quasi-public safety services, including the AERS, Railroad and Power channels, are at the

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26/ *See* 47 C.F.R. § 1.106(f) (stating that petitions for reconsideration must be filed within 30 days).

27/ 47 U.S.C. § 402(a), (c); 47 C.F.R. § 1.429(d); *see also, e.g.*, Implementation of the AM Expanded Band Allotment Plan, *Memorandum Opinion & Order*, 13 FCC Rcd 21872, 21873-74, ¶ 6 (1998).

28/ *See, e.g.*, National Telecommunications and Information Administration, Current and Future Spectrum Use by the Energy, Water, and Railroad Industries, NTIA Special Publication 01-49 (2002) (recognizing "the vital roles the railroad, water, and energy industries play in the Nation's critical infrastructure" and stating "[t]he events of September 11, 2001, have underlined the importance of these industries and the role that they play not only in our daily lives, but in times of disaster response and recovery"); Homeland Security: Communications Industry Considers Measures to Protect Nation's Communications Services Against Attack, *FCC News Release* (Dec. 6, 2002) (FCC Chairman Powell said, "[O]ur nation's communications network must be secure and protected to ensure that public safety, health, and law enforcement officials are able to respond and ensure the flow of information.").

forefront of the nation's homeland security effort. 29/ Now, more than ever, the users of these pools need interference-free access to spectrum, as well as designated coordinators with specialized knowledge of their unique and vital communications needs.

29/ *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002). Section 213 of the statute establishes "a critical infrastructure protection program" concerning use of national private sector networks in emergency response. Section 508 discusses the Secretary of Homeland Security's use of national private sector networks and infrastructure for emergency response to major disasters. For example, Respondent UTC notes that it has been deeply involved in Homeland Security efforts carried out by its member companies, and in educating agencies engaged in Homeland Security matters concerning the reliance of electrical, gas and water utilities and pipelines on telecommunications systems. UTC currently is engaged in industry efforts to meet the need for nationwide emergency interoperability, both among utilities responding to emergencies and including other responders. Connected with this effort is work by UTC's Next Generation Wireless Task Force to develop a model for wireless equipment manufacturers to meet utilities' integrated voice and data communications needs. As with AAA and railroads, UTC's work on many fronts is only possible because of its understanding of the day-to-day operations of utilities, their current problems and future needs.

IV. CONCLUSION

For the reasons set forth above, the Informal Request is procedurally deficient, contrary to established Commission rules and policies, and unsupported by facts or law. Therefore, the Respondents urge the Commission to dismiss or deny the Informal Request.

Respectfully submitted,

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February 6, 2003

CERTIFICATE OF SERVICE

I, Thomas J. Keller, do hereby certify that on the 23rd day of April 2003, I forwarded to the parties listed below a copy of the foregoing Opposition of the Association of American Railroads via First Class Mail.

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